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12 CALIFORNIA SPORTFISHING
13 PROTECTION ALLIANCE

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 CALIFORNIA SPORTFISHING
16 PROTECTION ALLIANCE, a non-profit
17 corporation,

17 Plaintiff,

18 vs.

19 AARON METALS COMPANY, a
20 corporation.

21 Defendant.

Case No. C07-03547 WHA

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387)

23 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE by and through its
24 counsel, hereby alleges:

25 **I. JURISDICTION AND VENUE**

26 1. This is a civil suit brought under the citizen suit enforcement provisions of the
27 Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the "Clean Water Act" or
28 "the Act"). This Court has subject matter jurisdiction over the parties and the subject matter

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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1 of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28
2 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is
3 authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of
4 actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§
5 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

6 2. On or about March 18, 2007, Plaintiff provided notice of Defendant's
7 violations of the Act, and of its intention to file suit against Defendant, to the Administrator
8 of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA
9 Region IX; the Executive Director of the State Water Resources Control Board ("State
10 Board"); and to the Executive Officer of the Regional Water Quality Control Board, San
11 Francisco Bay Region ("Regional Board"). By no later than March 22, 2007, Plaintiff
12 provided notice to Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and
13 correct copy of CSPA's notice letter is attached as Exhibit A, and is incorporated by
14 reference.

15 3. More than sixty days have passed since notice was served on Defendant and
16 the State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that
17 neither the EPA nor the State of California has commenced or is diligently prosecuting a
18 court action to redress the violations alleged in this complaint. This action's claim for civil
19 penalties is not barred by any prior administrative penalty under Section 309(g) of the Act,
20 33 U.S.C. § 1319(g).

21 4. Venue is proper in the Northern District of California pursuant to Section
22 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
23 within this judicial district. Pursuant to Local Rule 3-2(c), intradistrict venue is proper in
24 Oakland, California because the sources of the violations are located within Alameda
25 County, California.

26 **II. INTRODUCTION**

27 5. This complaint seeks relief for Defendant's discharges of polluted storm water
28 and non-storm water pollutants from Defendant's facility ("the Facility") into the waters of

the United States in violation of the Act and the State of California's "Waste Discharge Requirements (WDRs) For Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities," State Water Resources Control Board ("State Board") Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS000001, (hereinafter "the Order" or "Permit"). Defendant's violations of the discharge, treatment technology, monitoring requirements, and other procedural and substantive requirements of the Permit and the Act are ongoing and continuous.

6. The failure on the part of persons and facilities such as Defendant and its industrial facility to comply with storm water requirements is recognized as a significant cause of the continuing decline in water quality of the San Leandro Bay, San Francisco Bay ("Bay"), and other area receiving waters. The general consensus among regulatory agencies and water quality specialists is that storm pollution amounts to a substantial portion of the total pollution entering the aquatic environment each year. With every rainfall event, millions of gallons of polluted rainwater originating from industries within the surrounding area pour into the Bay.

7. The continuing decline in water quality in the San Francisco Bay is a matter of serious public concern. Data gathered by CalFed, a coalition of fifteen state and federal agencies analyzing water allocation issues, has confirmed that the Bay is a heavily polluted water body. The entire Bay, all of its major tributaries, and the waterways in and around the city of Oakland have all been identified by the State Board, the Regional Board, and EPA as impaired water bodies under Section 303(d) of the Clean Water Act. 33 U.S.C. § 1313(d).

III. PARTIES

8. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Stockton, California. CSPA has approximately 2,000 members who live, recreate and work in and around waters of the State of California,

1 including the San Leandro Bay and San Francisco Bay. CSPA is dedicated to the
2 preservation, protection, and defense of the environment, the wildlife and the natural
3 resources of all waters of California. To further these goals, CSPA actively seeks federal
4 and state agency implementation of the Act and other laws and, where necessary, directly
5 initiates enforcement actions on behalf of itself and its members.

6 9. Members of CSPA reside in and around the Bay and enjoy using the Bay for
7 recreation and other activities. Members of CSPA use and enjoy the waters into which
8 Defendant has caused, is causing, and will continue to cause, pollutants to be discharged.
9 Members of CSPA use those areas to fish, sail, boat, kayak, swim, bird watch, view wildlife
10 and engage in scientific study including monitoring activities, among other things.
11 Defendant's discharges of pollutants threaten or impair each of those uses or contribute to
12 such threats and impairments. Thus, the interests of CSPA's members have been, are being,
13 and will continue to be adversely affected by Defendant's failure to comply with the Clean
14 Water Act and the Permit. The relief sought herein will redress the harms to Plaintiff caused
15 by Defendant's activities.

16 10. Continuing commission of the acts and omissions alleged above will irreparably
17 harm Plaintiff and the citizens of the State of California, for which harm they have no plain,
18 speedy or adequate remedy at law.

19 11. Plaintiff is informed and believes, and thereupon alleges, that Defendant
20 AARON METALS COMPANY (hereinafter "Defendant" or "Aaron Metals") is a
21 corporation organized under the laws of California. Defendant Aaron Metals operates a non-
22 ferrous scrap metal recycling facility in Oakland, California.

23 **IV. STATUTORY BACKGROUND**

24 12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any
25 pollutant into waters of the United States, unless such discharge is in compliance with
26 various enumerated sections of the Act. Among other things, Section 301(a) prohibits
27 discharges not authorized by, or in violation of, the terms of an NPDES permit issued
28 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

1 13. Section 402(p) of the Act establishes a framework for regulating municipal and
2 industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States
3 with approved NPDES permit programs are authorized by Section 402(p) to regulate
4 industrial storm water discharges through individual permits issued to dischargers or through
5 the issuance of a single, statewide general permit applicable to all industrial storm water
6 dischargers. 33 U.S.C. § 1342(p).

7 14. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the
8 U.S. EPA has authorized California's State Board to issue NPDES permits including general
9 NPDES permits in California.

10 15. The State Board elected to issue a statewide general permit for industrial storm
11 water discharges. The State Board issued the General Permit on or about November 19,
12 1991, modified the General Permit on or about September 17, 1992, and reissued the
13 General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water
14 Act, 33 U.S.C. § 1342(p).

15 16. In order to discharge storm water lawfully in California, industrial dischargers
16 must comply with the terms of the General Permit or have obtained and complied with an
17 individual NPDES permit. 33 U.S.C. § 1311(a).

18 17. The General Permit contains several prohibitions. Effluent Limitation B(3) of
19 the General Permit requires dischargers to reduce or prevent pollutants in their storm water
20 discharges through implementation of the Best Available Technology Economically
21 Achievable ("BAT") for toxic and nonconventional pollutants and the Best Conventional
22 Pollutant Control Technology ("BCT") for conventional pollutants. BAT and BCT include
23 both nonstructural and structural measures. General Permit, Section A(8). Discharge
24 Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-
25 storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.
26 Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges to
27 any surface or ground water that adversely impact human health or the environment.
28 Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that

1 cause or contribute to an exceedance of any applicable water quality standards contained in
2 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

3 18. EPA has established Parameter Benchmark Values as guidelines for
4 determining whether a facility discharging industrial storm water has implemented the
5 requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established
6 Parameter Benchmark Values for the following parameters, among others: total suspended
7 solids – 100 mg/L; oil/grease – 15 mg/L; total organic carbon – 110 mg/L; aluminum – 0.75
8 mg/L; iron – 1 mg/L; zinc – 0.117 mg/L; copper – 0.0636 mg/L; lead – 0.0816 mg/L; and
9 chemical oxygen demand – 120 mg/L. The California State Water Resources Control Board
10 has proposed a Benchmark Value for electrical conductance of 200 μ mhos/cm.

11 19. In addition to absolute prohibitions, the General Permit contains a variety of
12 substantive and procedural requirements that dischargers must meet. Facilities discharging,
13 or having the potential to discharge, storm water associated with industrial activity that have
14 not obtained an individual NPDES permit must apply for coverage under the State's General
15 Permit by filing a Notice of Intent To Comply ("NOI"). The General Permit requires
16 existing dischargers to have filed their NOIs before March 30, 1992.

17 20. Dischargers must develop and implement a Storm Water Pollution Prevention
18 Plan ("SWPPP"). The SWPPP must describe storm water control facilities and measures that
19 comply with the BAT and BCT standards. The General Permit requires that an initial
20 SWPPP have been developed and implemented before October 1, 1992. The SWPPP must,
21 among other requirements, identify and evaluate sources of pollutants associated with
22 industrial activities that may affect the quality of storm and non-storm water discharges from
23 the facility and identify and implement site-specific best management practices ("BMPs") to
24 reduce or prevent pollutants associated with industrial activities in storm water and
25 authorized non-storm water discharges (Section A(2)). The SWPPP's BMPs must
26 implement BAT and BCT (Section B(3)). The SWPPP must include: a description of
27 individuals and their responsibilities for developing and implementing the SWPPP (Section
28 A(3)); a site map showing the facility boundaries, storm water drainage areas with flow

1 pattern and nearby water bodies, the location of the storm water collection, conveyance and
2 discharge system, structural control measures, impervious areas, areas of actual and potential
3 pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials
4 handled and stored at the site (Section A(5)); a description of potential pollutant sources
5 including industrial processes, material handling and storage areas, dust and particulate
6 generating activities, and a description of significant spills and leaks, a list of all non-storm
7 water discharges and their sources, and a description of locations where soil erosion may
8 occur (Section A(6)). The SWPPP must include an assessment of potential pollutant sources
9 at the Facility and a description of the BMPs to be implemented at the Facility that will
10 reduce or prevent pollutants in storm water discharges and authorized non-storm water
11 discharges, including structural BMPs where non-structural BMPs are not effective (Section
12 A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where
13 necessary (Section A(9),(10)).

14 21. Section C(11)(d) of the General Permit's Standard Provisions requires
15 dischargers to report any noncompliance to the Regional Board. *See also* Section E(6).
16 Lastly, Section A(9) of the General Permit requires an annual evaluation of storm water
17 controls including the preparation of an evaluation report and implementation of any
18 additional measures in the SWPPP to respond to the monitoring results and other inspection
19 activities.

20 22. The General Permit requires dischargers commencing industrial activities
21 before October 1, 1992 to develop and implement an adequate written monitoring and
22 reporting program no later than October 1, 1992. Existing facilities covered under the
23 General Permit must implement all necessary revisions to their monitoring programs no later
24 than August 1, 1997.

25 23. As part of their monitoring program, dischargers must identify all storm water
26 discharge locations that produce a significant storm water discharge, evaluate the
27 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control
28 measures set out in the SWPPP are adequate and properly implemented. Dischargers must

conduct visual observations of these discharge locations for at least one storm per month during the wet season (October through May) and record their findings in their Annual Report. Dischargers must also collect and analyze storm water samples from at least two storms per year. Section B(5)(a) of the General Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i)-(iii) requires dischargers to sample and analyze during the wet season for basic parameters, such as pH, total suspended solids (“TSS”), electrical conductance, and total organic content (“TOC”) or oil and grease (“O&G”), certain industry-specific parameters, and toxic chemicals and other pollutants likely to be in the storm water discharged from the facility. Section B(5) and Table D of the General Permit requires dischargers whose industrial activities fall within SIC Code 5093 to analyze their storm water discharge samples for zinc, aluminum, iron, lead, and chemical oxygen demand (“COD”). Dischargers must also conduct dry season visual observations to identify sources of non-storm water pollution.

16 24. Section B(14) of the General Permit requires dischargers to submit an annual
17 report by July 1 of each year to the executive officer of the relevant Regional Board. The
18 annual report must be signed and certified by an appropriate corporate officer. Sections
19 B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include
20 in their annual report an evaluation of their storm water controls, including certifying
21 compliance with the General Permit. *See also* Sections C(9) and (10) and B(14).

22 25. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
23 enforcement actions against any “person,” including individuals, corporations, or
24 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f),
25 § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. §
26 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to
27 \$27,500 per day (violations from January 30, 1997 through March 15, 2004) and \$32,500
28 per day (violations after March 15, 2004) pursuant to Sections 309(d) and 505 of the Act, 33

1 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

2 26. The Regional Board has established water quality standards for the San
3 Francisco Bay in the Water Quality Control Plan for the San Francisco Bay Basin, generally
4 referred to as the Basin Plan.

5 27. The Basin Plan includes a narrative toxicity standard which states that “[a]ll
6 waters shall be maintained free of toxic substances in concentrations that are lethal to or that
7 produce other detrimental responses in aquatic organisms.”

8 28. The Basin Plan provides that “[w]aters shall not contain suspended material in
9 concentrations that cause nuisance or adversely affect beneficial uses” and that “[w]aters
10 shall not contain biostimulatory substances in concentrations that promote aquatic growths to
11 the extent that such growths cause nuisance or adversely affect beneficial uses.”

12 29. The Basin Plan dictates that “[w]aters shall be free of changes in turbidity that
13 cause nuisance or adversely affect beneficial uses.”

14 30. The Basin Plan provides that “[w]aters shall not contain suspended material in
15 concentrations that cause nuisance or adversely affect beneficial uses.”

16 31. The Basin Plan provides that “[w]aters shall not contain oils, greases, waxes,
17 or other materials in concentrations that result in a visible film or coating on the surface of
18 the water or on objects in the water, that cause nuisance, or that otherwise adversely affect
19 beneficial uses.”

20 32. The Basin Plan establishes Marine Water Quality Objectives for the following
21 pollutants: zinc – 0.081 mg/L (4-day average), 0.090 mg/L (1-hour average); lead – 0.0081
22 mg/L (4-day average), 0.22 mg/L (1-hour average).

23 33. EPA has established numeric water quality standards for priority toxic
24 pollutants, including criteria intended to protect aquatic life. These include (at a hardness of
25 100 mg/L): copper – 0.009 mg/L; and zinc – 0.120 mg/L. EPA has also established a
26 numeric water quality criterion for aluminum of 0.087 mg/L.

27 **V. STATEMENT OF FACTS**

28 34. Defendant Aaron Metals Company operates a metal recycling facility at 750

1 105th Avenue in Oakland, California. The Facility is engaged in non-ferrous scrap metal
2 recycling. The Facility falls within the Standard Industrial Classification (“SIC”) Code
3 5093. The Facility covers about 2 acres, the majority of which is paved and used for storing
4 and processing different types of metal and miscellaneous equipment, including large
5 forklifts and other vehicles. On information and belief, Plaintiff alleges that there are several
6 buildings located on the property. On information and belief, Plaintiff alleges that metal
7 recycling is conducted both inside and outside of these buildings. Metal is transported in
8 and out of these buildings for storage in the paved and unpaved areas of the Facility.

9 35. Defendant channels and collects storm water falling on the Facility through two
10 storm water outfalls. Storm water discharged from each outfall enters municipal storm
11 drains near the Facility. One drain, located at 105th Avenue, is adjacent to the Facility. The
12 other drain, located on Pearmain Street, is on a nearby street. Plaintiff is informed and
13 believes, and thereupon alleges that, water discharged to the storm drains flows to San
14 Leandro Bay. San Leandro Bay is an embayment of the San Francisco Bay.

15 36. The industrial activities at the site include the storage, processing, and
16 recycling of a variety of metals including aluminum, copper, brass, stainless steel, nickel,
17 titanium, lead, insulated wire, high temp alloys, gold, silver, and platinum. It also includes
18 the storage, maintenance, and cleaning of equipment used to process and recycle metals, and
19 the outdoor handling, processing, and storage of various materials used in the recycling
20 process.

21 37. Significant activities at the site take place outside and are exposed to rainfall.
22 These activities include the storage of scrap and recycled metals, equipment used in the
23 recycling processes; the storage and use of vehicles and equipment for materials handling;
24 and the storage, handling, and disposal of waste materials. Loading and delivery of scrap
25 and recycled metals occurs outside. Trucks enter and exit the Facility directly from and to a
26 public road. Fork lifts are the primary means of moving scrap and recycled metals around
27 the unpaved storage areas of the Facility. Plaintiff is informed and believes, and thereupon
28 alleges, that metal recycling activities also occur in exposed areas at the Facility. The

1 Facility's exposed areas contain large quantities of scrap and recycled metals. Plaintiff
2 alleges on information and belief that many of the exposed surfaces at the Facility include
3 metal shavings, filings, fines, and other materials that are the result of the metal recycling
4 process. These areas are exposed to storm water and storm flows due to the lack of overhead
5 coverage, berms and other storm water controls.

6 38. Industrial machinery and heavy equipment, including trucks and trailers are
7 operated and stored at the Facility in areas exposed to storm water flows. Plaintiff is
8 informed and believes, and thereupon alleges, that such machinery and equipment leak
9 contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are exposed
10 to storm water flows. Trucks leaving the Facility track substantial amounts of material onto
11 105th Avenue. During rain events, material that has been tracked onto 105th Avenue from the
12 Facility during dry weather is transported via storm water to storm drain channels.

13 39. Plaintiff is informed and believes, and thereupon alleges that the storm water
14 flows easily over the surface of the Facility, collecting suspended sediment, dirt, oils, grease,
15 metals, and other pollutants as it flows toward the storm water drains. Storm water and any
16 pollutants contained in that storm water entering the drains flows directly to the storm drains
17 adjacent to the Facility.

18 40. The management practices at the Facility are wholly inadequate to prevent the
19 sources of contamination described above from causing the discharge of pollutants to waters
20 of the United States. The Facility lacks sufficient structural controls such as grading,
21 berming, roofing, containment, or drainage structures to prevent rainfall and storm water
22 flows from coming into contact with these and other exposed sources of contaminants. The
23 Facility lacks sufficient structural controls to prevent the discharge of water once
24 contaminated. The Facility lacks adequate storm water pollution treatment technologies to
25 treat storm water once contaminated. The Facility lacks any structural controls to prevent
26 the tracking of pollutants onto 105th Avenue.

27 41. Since at least December 16, 2002, Defendant has taken samples or arranged for
28 samples to be taken of storm water discharges at the Facility. The sample results were

1 reported in the Facility's annual reports submitted to the Regional Board. Defendant Aaron
2 Metals certified each of those annual reports pursuant to Sections A and C of the General
3 Permit.

4 42. Since at least December 16, 2002, the Facility has detected iron, aluminum,
5 copper, total suspended solids, oil and grease, and electrical conductance in storm water
6 discharged from the Facility. Levels of these pollutants detected in the Facility's storm
7 water have been in excess of EPA's numeric parameter benchmark values. Levels of these
8 pollutants detected in the Facility's storm water have been in excess of water quality
9 standards established in the Basin Plan.

10 43. The levels of iron detected by the Facility in its storm water have exceeded the
11 benchmark value for iron of 1.0 mg/L established by EPA. For example, on January 30,
12 2006, the level of iron measured by Defendant in the Facility's discharged storm water was
13 5.1 mg/L. That level of iron is over five times the benchmark value for iron established by
14 EPA. That level of iron is seventeen times the 0.3 mg/L maximum contaminant level for
15 iron incorporated by the Basin Plan as a water quality standard for the San Francisco Bay
16 region.

17 44. The levels of aluminum detected by the Facility in its storm water have
18 exceeded the benchmark value for aluminum of 0.75 mg/L established by EPA. For
19 example, on December 16, 2002, the level of aluminum measured by Defendant in the
20 Facility's discharged storm water was 41.0 mg/L. That level of aluminum is nearly fifty-five
21 times the benchmark value for aluminum established by EPA.

22 45. The levels of copper detected by the Facility in its storm water have exceeded
23 the benchmark value for copper of 0.0636 mg/L established by EPA. For example, on
24 January 30, 2006, the level of copper measured by Defendant in the Facility's discharged
25 storm water was 0.88 mg/L. That level of copper is nearly fourteen times the benchmark
26 value for copper established by EPA.

27 46. The levels of total suspended solids in storm water detected by the Facility
28 have exceeded the benchmark value for total suspended solids of 100 mg/L established by

1 EPA. For example, on December 16, 2002, the level of suspended solids measured by
2 Defendant in the Facility's discharged storm water was 790 mg/L. That level of total
3 suspended solids is nearly eight times the benchmark value for suspended solids established
4 by EPA.

5 47. The levels of oil and grease in storm water detected by the Facility have
6 exceeded the benchmark value for oil and grease of 15 mg/L established by EPA. For
7 example, on December 16, 2002, the level of oil and grease measured by Defendant in the
8 Facility's discharged storm water was 76 mg/L. That level of oil and grease is over five
9 times the benchmark value for oil and grease established by EPA.

10 48. The electrical conductance levels detected by the Facility in its storm water
11 have been greater than the numeric water quality standards applicable to electrical
12 conductance in California. The electrical conductance levels detected by the Facility in its
13 storm water have been greater than the benchmark value of 200 $\mu\text{mho/cm}$ proposed by the
14 State Board. For example, on December 16, 2002, the electrical conductance level measured
15 by Defendant in the Facility's discharged storm water was 400 $\mu\text{mho/cm}$. That electrical
16 conductance level is two times the State Board's proposed benchmark value.

17 49. On information and belief, Plaintiff alleges that Defendants have failed to
18 analyze its storm water samples for COD as required by the Table D of the General Permit
19 since at least December 16, 2002.

20 50. On information and belief, Plaintiff alleges that Defendants have failed to
21 analyze its storm water samples for copper as required by Section B(5)(c)(iii) of the General
22 Permit since at least December 16, 2002, through March 29, 2005.

23 51. On information and belief, Plaintiff alleges that Defendants have failed to
24 analyze its storm water samples for iron as required by the Table D of the General Permit
25 since at least December 16, 2002, through March 29, 2005.

26 52. On information and belief, Plaintiff alleges that Defendants have failed to
27 analyze its storm water samples for zinc as required by the Table D of the General Permit
28 since at least December 16, 2002.

1 53. On information and belief, Plaintiff alleges that Defendants have failed to
2 analyze its storm water samples for lead as required by the Table D of the General Permit
3 since at least December 16, 2002.

4 54. On information and belief, Plaintiff alleges that since at least December 16,
5 2002, Defendant has failed to implement BAT and BCT at the Facility for its discharges of
6 suspended solids, iron, electrical conductance, zinc, lead, copper, COD, aluminum, oil and
7 grease, and other pollutants. Section B(3) of the General Permit requires that Defendant
8 implement BAT for toxic and nonconventional pollutants and BCT for conventional
9 pollutants by no later than October 1, 1992. As of the date of this Complaint, Defendant has
10 failed to implement BAT and BCT.

11 55. On information and belief, Plaintiff alleges that since at least October 1, 1992,
12 Defendant has failed to implement an adequate Storm Water Pollution Prevention Plan
13 (“SWPPP”) for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the
14 SWPPP prepared for the Facility does not set forth site-specific best management practices
15 for the Facility that are consistent with BAT or BCT for the Facility. Plaintiff is informed
16 and believes, and thereupon alleges, that the SWPPP prepared for the Facility does not
17 include an assessment of potential pollutant sources, structural pollutant control measures
18 employed by the Defendant, a list of actual and potential areas of pollutant contact, or a
19 description of best management practices to be implemented at the Facility to reduce
20 pollutant discharges. According to information available to CSPA, Defendant’s SWPPP has
21 not been evaluated to ensure effectiveness and revised where necessary to further reduce
22 pollutant discharges. Plaintiff is informed and believes, and thereupon alleges, that the
23 SWPPP does not include each of the mandatory elements required by Section A of the
24 General Permit. Plaintiff is informed and believed that the SWPPP does not contain an
25 accurate map that clearly delineates the boundaries of the Facility.

26 56. Information available to CSPA indicates that as a result of these practices,
27 storm water containing excessive pollutants is being discharged during rain events from the
28 Facility directly to storm drains that flow into San Leandro Bay and San Francisco Bay.

1 57. The San Francisco Bay has been identified by the Regional Board, State Board
2 and federal EPA as impaired for several pollutants, including mercury and unknown toxicity.

3 58. Plaintiff is informed and believes, and thereupon alleges, that pollutants
4 discharged by the Facility in its storm water are contributing to violations of water quality
5 standards that currently exist in the San Francisco Bay. Plaintiff is informed and believes, and
6 thereupon alleges, that Defendant is discharging copper, lead, iron, zinc, aluminum,
7 suspended solids, and other un-monitored pollutants that are causing or contributing to
8 exceedances of applicable water quality standards. Defendant is contributing to violations of
9 water quality standards including, but not limited to, the narrative water quality standard for
10 toxicity and the numeric water quality standard for electrical conductance.

11 59. Plaintiff is informed and believes, and thereupon alleges, that, Defendant has
12 failed and continues to fail to alter the Facility's SWPPP and site-specific BMPs consistent
13 with Section A(9) of the General Permit.

14 60. Plaintiff is informed and believes that Defendant failed submit to the Regional
15 Board a true and complete annual report certifying compliance with the General Permit since
16 at least December 16, 2002. Pursuant to Sections A(9)(d), B(14), and C(9), (10) of the
17 General Permit, Defendant must submit an annual report, that is signed and certified by the
18 appropriate corporate officer, outlining the Facility's storm water controls and certifying
19 compliance with the General Permit. Plaintiff is informed and believes, and thereupon
20 alleges, that Defendant has signed incomplete annual reports that purported to comply with
21 the General Permit when there was significant noncompliance at the Facility.

22 61. Information available to Plaintiff indicates that Defendant has not fulfilled the
23 requirements set forth in the General Permit for discharges from the Facility due to the
24 continued discharge of contaminated storm water. Plaintiff is informed and believes, and
25 thereupon alleges, that all of the violations alleged in this Complaint are ongoing and
26 continuing.

VI. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

**Failure to Develop and Implement the Best Available and
Best Conventional Treatment Technologies
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

62. Plaintiff realleges and incorporate Paragraphs 1-61, as if fully set forth herein.

63. The General Permit's SWPPP requirements and Effluent Limitation B(3) require dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. Defendant has failed to implement BAT and BCT at the Facility for its discharges of suspended solids, iron, aluminum, electrical conductance, zinc, and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

64. Each day since October 1, 1992 that Defendant has failed to develop and implement BAT and BCT in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

65. Defendant has been in violation of the BAT/BCT requirements every day since October 1, 1992. Defendant continues to be in violation of the BAT/BCT requirements each day that it fails to develop and fully implement an adequate BAT/BCT for the Facility.

SECOND CAUSE OF ACTION

**Failure to Prepare, Implement, Review, and Update
an Adequate Storm Water Pollution Prevention Plan
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

66. Plaintiff realleges and incorporate Paragraphs 1-65, as if fully set forth herein.

67. Section A and Provision E of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement an adequate SWPPP no later than October 1, 1992.

68. Defendant has failed to develop and implement an adequate SWPPP for the Facility. Defendant's ongoing failure to develop and implement an adequate SWPPP for the Facility is evidenced by, *inter alia*, Defendant's outdoor storage of metals, including manufacturing and waste materials, without appropriate best management practices; the continued exposure of significant quantities of raw and finished materials to storm water flows;

1 the continued exposure and tracking of waste resulting from the operation or maintenance of
 2 vehicles at the site, including trucks and forklifts, the failure to either treat storm water prior to
 3 discharge or to implement effective containment practices; and the continued discharge of
 4 storm water pollutants from the Facility at levels in excess of EPA benchmark values.

5 69. Defendant has failed to update the Facility's SWPPP in response to the
 6 analytical results of the Facility's storm water monitoring.

7 70. Each day since October 1, 1992 that Defendant has failed to develop, implement
 8 and update an adequate SWPPP for the Facility is a separate and distinct violation of Section
 9 301(a) of the Act, 33 U.S.C. § 1311(a).

10 71. Defendant has been in violation of the SWPPP requirements every day since
 11 October 1, 1992. Defendant continues to be in violation of the SWPPP requirements each day
 12 that it fails to develop and fully implement an adequate SWPPP for the Facility.

13 **THIRD CAUSE OF ACTION**

14 **Failure to Develop and Implement an Adequate Monitoring and Reporting Program 15 (Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

16 72. Plaintiff re-alleges and incorporates Paragraphs 1-71, inclusive, as if fully set
 17 forth herein.

18 73. Section B of the General Permit requires dischargers of storm water associated
 19 with industrial activity to develop and implement a monitoring and reporting program
 20 (including, *inter alia*, sampling and analysis of discharges) no later than October 1, 1992.

21 74. Defendant has failed to develop and implement an adequate monitoring and
 22 reporting program for the Facility. Defendant's ongoing failure to develop and implement
 23 an adequate monitoring and reporting program are evidenced by, *inter alia*, their failure to
 24 monitor for requisite pollution parameters.

25 75. Each day since October 1, 1992 that Defendant has failed to develop and
 26 implement an adequate monitoring and reporting program for the Facility in violation of the
 27 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §
 28 1311(a). The absence of requisite monitoring and analytical results are ongoing and
 continuous violations of the Act.

FOURTH CAUSE OF ACTION
Discharges of Contaminated Storm Water
in Violation of Permit Conditions and the Act
(Violations of 33 U.S.C. §§ 1311(a), 1342)

76. Plaintiff re-alleges and incorporates Paragraphs 1-75, inclusive, as if fully set forth herein.

77. Discharge Prohibition A(2) of the General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the General Permit require that storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

78. Plaintiff is informed and believes, and thereupon alleges, that since at least December 19, 2002, Defendant has been discharging polluted storm water from the Facility directly to storm drains that flow into the San Leandro Bay and the San Francisco Bay, in violation of the Discharge Prohibition A(2) of the General Permit.

79. During every rain event, rainwater flows freely over exposed metal products, production materials, waste products, and other accumulated pollutants at the Facility, becoming contaminated with these pollutants. The rainwater then flows untreated from the Facility into one or more adjacent storm water drains. This contaminated storm water flows through the drains into nearby San Leandro Bay, a part of the San Francisco Bay.

80. Plaintiff is informed and believes, and thereupon alleges, that these discharges of contaminated storm water are causing pollution and contamination of the waters of the United States in violation of Discharge Prohibition A(2) of the General Permit.

81. Plaintiff is informed and believes, and thereupon alleges, that these discharges of contaminated storm water are adversely affecting human health and the environment in violation of Receiving Water Limitation C(1) of the General Permit.

82. Plaintiff is informed and believes, and thereupon alleges, that these discharges of

contaminated storm water are contributing to the violation of the applicable water quality standards in the Statewide Water Quality Control Plan and/or the applicable Regional Board's Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

83. Every day since at least December 16, 2002, that Defendant has discharged and continues to discharge polluted storm water from the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These violations are ongoing and continuous.

FIFTH CAUSE OF ACTION

False Certification of Compliance In Annual Report (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

84. Plaintiff realleges and incorporate Paragraphs 1-83, as if fully set forth herein.

85. Defendant has falsely certified compliance with the General Permit in each of the annual reports submitted to the Regional Board since at least June 2001.

86. Each day since at least June 30, 2001 that Defendant has falsely certified compliance with the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of the General Permit's certification requirement each day that it maintains its false certification of its compliance with the General Permit.

VII. RELIEF REQUESTED

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- a. Declare Defendant to have violated and to be in violation of the Act as alleged herein;
- b. Enjoin Defendant from discharging polluted storm water from the Facility unless authorized by the Permit;
- c. Enjoin Defendant from further violating the substantive and procedural requirements of the Permit;
- d. Order Defendant to immediately implement storm water pollution control and treatment technologies and measures that are equivalent to BAT or BCT and prevent pollutants in the Facility's storm water from contributing to violations of any water quality

standards;

e. Order Defendant to comply with the Permit's monitoring and reporting requirements, including ordering supplemental monitoring to compensate for past monitoring violations;

f. Order Defendant to prepare a SWPPP consistent with the Permit's requirements and implement procedures to regularly review and update the SWPPP;

g. Order Defendant to provide Plaintiff with reports documenting the quality and quantity of their discharges to waters of the United States and their efforts to comply with the Act and the Court's orders;

h. Order Defendant to pay civil penalties of \$27,500 per day per violation for all violations occurring before March 15, 2004, and \$32,500 per day per violation for all violations occurring after March 15, 2004, for each violation of the Act pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

i. Order Defendant to take appropriate actions to restore the quality of waters impaired or adversely affected by their activities;

j. Award Plaintiff's costs (including reasonable investigative, attorney, witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

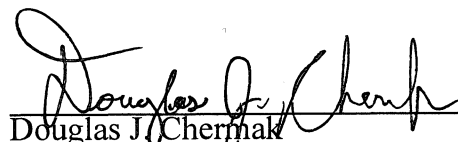
k. Award any such other and further relief as this Court may deem appropriate.

Dated: July 9, 2007

Respectfully submitted,

LAW OFFICE OF MICHAEL R. LOZEAU

By:



Douglas J. Chermak
Attorney for Plaintiff
CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE

EXHIBIT A



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: deltakeep@aol.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 14, 2007

Paul Forkash
Owner, Operator, and Registered Agent
Andy Smilovitz, Supervisor
Aaron Metals Company
750 105th Avenue
Oakland, CA 94603

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act**

Dear Sirs:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("Act") that CSPA believes are occurring at Aaron Metals Company ("Facility") located at 750 105th Avenue in Oakland, California. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay, San Leandro Bay, and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of Aaron Metals (all recipients are hereinafter collectively referred to as "Aaron Metals").

This letter addresses Aaron Metals' unlawful discharge of pollutants from the Facility through the Oakland municipal storm sewer system into San Francisco Bay and San Leandro Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit"). The WDID identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board ("the Regional Board") is 201S003753. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur.

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As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Aaron Metals is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violation and Intent to Sue, CSPA intends to file suit in federal court against Aaron Metals, Paul Forkash, and Andy Smilovitz under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order. These violations are described more extensively below.

I. Background.

On May 13, 1997 Aaron Metals filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). Aaron Metals certifies that the Facility is classified under SIC code 5093 ("processing, reclaiming, and wholesale distribution of scrap and waste materials"). The Facility collects and discharges storm water from its two-acre industrial site into storm drain outlets at its north and south recycling yards. Storm water discharged by Aaron Metals to those drains is then discharged to San Leandro Bay and San Francisco Bay. The San Francisco Regional Water Quality Control Board (the "Regional Board" or "Board") has identified waters of San Francisco Bay and San Leandro Bay as failing to meet applicable water quality standards for dissolved oxygen, unknown toxicity, electrical conductivity, pesticides and mercury. See <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>.

The Regional Board has identified beneficial uses of the Bay region's waters and established water quality standards for the San Francisco Bay, including the San Leandro Bay and the Oakland Estuary, in the "Water Quality Control Plan for the San Francisco Bay Basin," generally referred to as the Basin Plan. *See* <http://www.swrcb.ca.gov/rwqcb2/basinplan.htm>. The beneficial uses of these waters include among others contact and non-contact recreation, fish migration, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to noncontact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies require protection of habitats and aesthetic features." Basin Plan at 2.1.16. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of the Bay for contact and noncontact water recreation. For example, pollutant discharges of high suspended solids and other pollutants in industrial storm water contribute to the existing impairments of San Leandro Bay, including high electrical conductivity and low dissolved oxygen.

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The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life” and “... that are lethal to or that produce other detrimental responses in aquatic organisms.” See http://www.swrcb.ca.gov/rwqcb2/basinplan/web/BP_CH3.html. The Basin Plan includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” The Basin Plan provides that “[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” See *id.* The Basin Plan establishes Marine Water Quality Objectives for zinc of .081 mg/l (4-day average) and .090 mg/l (1-hour average); and lead of .0081 mg/L (4 day average) and .21 mg/L (1hour average). See http://www.swrcb.ca.gov/rwqcb2/basinplan/web/tab_3-3.html. EPA has adopted a numeric water quality standard for copper of .0031 mg/L (4-day average) and .0048 mg/L (1-hour average). 65 Fed.Reg. 31712 (May 18, 2000).

The U.S. Environmental Protection Agency (“EPA”) has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by Aaron Metals: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L, chemical oxygen demand (“COD”) – 120 mg/L, aluminum – .75 mg/L, zinc – 0.117 mg/L, iron – 1 mg/L, copper – .0636 mg/L, lead – .0816 mg/L. The State Water Quality Control Board also recently proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

Aaron Metals has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, oil and grease (“O&G”), pH, biochemical oxygen demand (“BOD”), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

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In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. The Board has identified sediments in the San Leandro Bay as contaminated by zinc to an extent that is adversely affecting beneficial uses in those areas. See <http://www.swrcb.ca.gov/tmdl/docs/2002reg2303dlist.pdf>

Aaron Metals has discharged and continues to discharge storm water with unacceptable levels of total suspended solids, specific conductivity, aluminum, copper, cadmium, iron, and other pollutants in violation of the General Permit. Aaron Metals' sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

Date	Parameter	Concentration	Objective	Benchmark	Location
1/30/2006	Iron	5.1 mg/l		1.0 mg/l	North Yd.
1/30/2006	Copper	0.88 mg/l	.0048 mg/L (1-hour avg.)	0.0636	North Yd.
1/30/2006	Aluminum	3.6 mg/l	Narrative	0.75 mg/l	North Yd.
1/30/2006	TSS	134 mg/l	Narrative	100 mg/l	North Yd.
11/29/2005	Copper	0.15 mg/l	.0048 mg/L (1-hour avg.)	.0636 mg/l	North Yd.
3/29/2005	Aluminum	5.6 mg/l	Narrative	0.75 mg/l	North Yd.
3/29/2005	TSS	240 mg/L	Narrative	100 mg/L	North Yd.
12/27/2004	Aluminum	3.1 mg/l	Narrative	0.75 mg/l	South Yd.
12/27/2004	O&G	17 mg/l	Narrative	15 mg/l	South Yd.
2/25/2004	TSS	410 mg/l	Narrative	100 mg/l	North Yd.

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2/25/2004	Aluminum	10 mg/l	Narrative	0.75 mg/l	North Yd.
2/25/2004	TSS	500 mg/l	Narrative	100 mg/l	South Yd.
2/25/2004	Aluminum	16 mg/l	Narrative	0.75 mg/l	South Yd.
2/25/2004	O&G	23 mg/l	Narrative	15 mg/l	North Yd.
2/25/2004	O&G	24 mg/l	Narrative	15 mg/l	South Yd.
2/2/2004	Aluminum	4.5 mg/l	Narrative	0.75 mg/l	North Yd.
2/2/2004	TSS	200 mg/l	Narrative	100 mg/l	North Yd.
2/2/2004	Aluminum	8.0 mg/l	Narrative	0.75 mg/l	South Yd.
2/2/2004	TSS	280 mg/l	Narrative	100 mg/l	South Yd.
2/2/2004	O&G	19 mg/l	Narrative	15 mg/l	North Yd.
2/2/2004	O&G	24 mg/l	Narrative	15 mg/l	South Yd.
4/12/2003	Aluminum	5.1 mg/l	Narrative	0.75 mg/l	North Yd.
4/12/2003	TSS	200 mg/l	Narrative	100 mg/l	North Yd.
4/12/2003	Aluminum	2.3 mg/l	Narrative	0.75 mg/l	South Yd.
12/16/2002	Aluminum	14 mg/l	Narrative	0.75 mg/l	North Yd.
12/16/2002	TSS	490 mg/l	Narrative	100 mg/l	North Yd.
12/16/2002	Specific Conductivity	270 µmho/cm	Narrative	200 µmho/cm (proposed)	North Yd.
12/16/2002	Aluminum	41 mg/l	Narrative	0.75 mg/l	South Yd.
12/16/2002	TSS	790 mg/l	Narrative	0.75 mg/l	South Yd.
12/16/2002	Specific Conductivity	400 µmho/cm	Narrative	200 µmho/cm (proposed)	South Yd.
12/16/2002	O&G	24 mg/l	Narrative	15 mg/l	North Yd.
12/16/2002	O&G	76 mg/l	Narrative	15 mg/l	South Yd.

CSPA's investigation, including its review of Aaron Metals' analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values and the State Board's proposed benchmark for electrical conductivity, indicates that Aaron Metals has not implemented BAT and BCT at the Facility for its discharges of TSS, specific conductivity, aluminum, copper, iron and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. Aaron Metals was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, Aaron Metals is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT. In addition, the above numbers indicate that the facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since March 14, 2002, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Aaron Metals has discharged storm water containing impermissible

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levels of TSS, aluminum, copper, iron, and O&G in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Aaron Metals is subject to penalties for violations of the General Permit and the Act since March 14, 2002.

B. Failure to Sample and Analyze for Mandatory Parameters

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). Collected samples must be analyzed for TSS, pH, specific conductance, and either total organic carbon or O&G. *Id.* at Section B(5)(c)(i). Facilities also must analyze their storm water samples for “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. *Id.* at Section B(5)(c)(ii). Certain SIC Codes also must analyze for additional specified parameters. *Id.* at Section B(5)(c)(iii); *id.*, Table D. Facilities within SIC Code 5093, including Aaron Metals, must analyze each of its storm water samples for COD, iron, lead, zinc, and aluminum. *Id.*, Table D (Sector N). CSPA’s review of Aaron Metal’s monitoring data indicates that you have failed to analyze for the following required parameters in samples taken on the following dates at the identified storm water discharge locations at the Facility:

Date	Parameter	Concentration	Objective	Benchmark	Location
1/30/2006	Lead	No analysis		.0816 mg/l	North Yd.
1/30/2006	Zinc	No analysis		0.117 mg/l	North Yd.
1/30/2006	COD	No analysis		120 mg/l	North Yd.
1/30/2006	Lead	No analysis		.0816 mg/l	South Yd.
1/30/2006	Zinc	No analysis		0.117 mg/l	South Yd.
1/30/2006	COD	No analysis		120 mg/l	South Yd.
11/29/2005	Lead	No analysis		.0816 mg/l	North Yd.
11/29/2005	Zinc	No analysis		0.117 mg/l	North Yd.
11/29/2005	COD	No analysis		120 mg/l	North Yd.
11/29/2005	Lead	No analysis		.0816 mg/l	South Yd.
11/29/2005	Zinc	No analysis		0.117 mg/l	South Yd.
11/29/2005	COD	No analysis		120 mg/l	South Yd.
3/29/2005	Iron	No analysis		1.0 mg/l	North Yd.
3/29/2005	Lead	No analysis		.0816 mg/l	North Yd.
3/29/2005	Zinc	No analysis		0.117 mg/l	North Yd.
3/29/2005	Copper	No analysis		.0636 mg/l	North Yd.

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3/29/2005	COD	No analysis		120 mg/l	North Yd.
3/29/2005	Iron	No analysis		1.0 mg/l	South Yd.
3/29/2005	Lead	No analysis		.0816 mg/l	South Yd.
3/29/2005	Zinc	No analysis		0.117 mg/l	South Yd.
3/29/2005	Copper	No analysis		.0636 mg/l	South Yd.
3/29/2005	COD	No analysis		120 mg/l	South Yd.
12/27/2004	Iron	No analysis		1.0 mg/l	North Yd.
12/27/2004	Lead	No analysis		.0816 mg/l	North Yd.
12/27/2004	Zinc	No analysis		0.117 mg/l	North Yd.
12/27/2004	Copper	No analysis		.0636 mg/l	North Yd.
12/27/2004	COD	No analysis		120 mg/l	North Yd.
12/27/2004	Iron	No analysis		1.0 mg/l	South Yd.
12/27/2004	Lead	No analysis		.0816 mg/l	South Yd.
12/27/2004	Zinc	No analysis		0.117 mg/l	South Yd.
12/27/2004	Copper	No analysis		.0636 mg/l	South Yd.
12/27/2004	COD	No analysis		120 mg/l	South Yd.
2/25/2004	Iron	No analysis		1.0 mg/l	North Yd.
2/25/2004	Lead	No analysis		.0816 mg/l	North Yd.
2/25/2004	Zinc	No analysis		0.117 mg/l	North Yd.
2/25/2004	Copper	No analysis		.0636 mg/l	North Yd.
2/25/2004	COD	No analysis		120 mg/l	North Yd.
2/25/2004	Iron	No analysis		1.0 mg/l	South Yd.
2/25/2004	Lead	No analysis		.0816 mg/l	South Yd.
2/25/2004	Zinc	No analysis		0.117 mg/l	South Yd.
2/25/2004	Copper	No analysis		.0636 mg/l	South Yd.
2/25/2004	COD	No analysis		120 mg/l	South Yd.
2/2/2004	Iron	No analysis		1.0 mg/l	North Yd.
2/2/2004	Lead	No analysis		.0816 mg/l	North Yd.
2/2/2004	Zinc	No analysis		0.117 mg/l	North Yd.
2/2/2004	Copper	No analysis		.0636 mg/l	North Yd.
2/2/2004	COD	No analysis		120 mg/l	North Yd.
2/2/2004	Iron	No analysis		1.0 mg/l	South Yd.
2/2/2004	Lead	No analysis		.0816 mg/l	South Yd.
2/2/2004	Zinc	No analysis		0.117 mg/l	South Yd.
2/2/2004	Copper	No analysis		.0636 mg/l	South Yd.
2/2/2004	COD	No analysis		120 mg/l	South Yd.
4/12/2003	Iron	No analysis		1.0 mg/l	North Yd.
4/12/2003	Lead	No analysis		.0816 mg/l	North Yd.
4/12/2003	Zinc	No analysis		0.117 mg/l	North Yd.
4/12/2003	Copper	No analysis		.0636 mg/l	North Yd.
4/12/2003	COD	No analysis		120 mg/l	North Yd.

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4/12/2003	Iron	No analysis		1.0 mg/l	South Yd.
4/12/2003	Lead	No analysis		.0816 mg/l	South Yd.
4/12/2003	Zinc	No analysis		0.117 mg/l	South Yd.
4/12/2003	Copper	No analysis		.0636 mg/l	South Yd.
4/12/2003	COD	No analysis		120 mg/l	South Yd.
12/16/2002	Iron	No analysis		1.0 mg/l	North Yd.
12/16/2002	Lead	No analysis		.0816 mg/l	North Yd.
12/16/2002	Zinc	No analysis		0.117 mg/l	North Yd.
12/16/2002	Copper	No analysis		.0636 mg/l	North Yd.
12/16/2002	COD	No analysis		120 mg/l	North Yd.
12/16/2002	Iron	No analysis		1.0 mg/l	South Yd.
12/16/2002	Lead	No analysis		.0816 mg/l	South Yd.
12/16/2002	Zinc	No analysis		0.117 mg/l	South Yd.
12/16/2002	Copper	No analysis		.0636 mg/l	South Yd.
12/16/2002	COD	No analysis		120 mg/l	South Yd.

Each of the above listed failures to analyze for specific required parameters is a violation of General Permit, Section B(5)(iii). These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Aaron Metals is subject to penalties for violations of the General Permit and the Act since March 14, 2002.

C. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas,

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areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

CSPA's investigation of the conditions at the Facility as well as Aaron Metals' Annual Reports indicate that Aaron Metals has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Aaron Metals has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Aaron Metals has been in continuous violation of Section A and Provision E(2) of the General Permit every day since March 14, 2002 at the very latest, and will continue to be in violation every day that Aaron Metals fails to develop and implement an effective SWPPP. Aaron Metals is subject to penalties for violations of the Order and the Act occurring since March 14, 2002.

D. Failure to File True and Correct Annual Reports.

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

For the last five years, Aaron Metals and its agent, Paul Forkash, inaccurately certified in their Annual Reports that the facility was in compliance with the General Permit. Consequently, Aaron Metals has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Aaron Metals failed to submit a complete or correct report and every time Aaron Metals or its agents falsely purported to comply with the Act. Aaron Metals is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since June 1, 2002.

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IV. Persons Responsible for the Violations.

CSPA puts Aaron Metals, Paul Forkash, and Andy Smilovitz on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Aaron Metals, Paul Forkash, and Andy Smilovitz on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

Our name, address and telephone number is as follows:

Bill Jennings, Executive Director;
California Sportfishing Protection Alliance,
3536 Rainier Avenue,
Stockton, CA 95204
Tel. (209) 464-5067

VI. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Michael R. Lozeau
Law Office of Michael R. Lozeau
1516 Oak Street, Suite 216
Alameda, California 94501
Tel. (510) 749-9102
mrlozeau@lozeaulaw.com

Andrew L. Packard
Law Offices of Andrew L. Packard
319 Pleasant Street
Petaluma, California 94952
Tel. (707) 763-7227
andrew@packardlawoffices.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Aaron Metals to a penalty of up to \$32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

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CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Aaron Metals and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings", is positioned above the printed name and title.

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

Steve Johnson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Tom Howard, Acting Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Alberto Gonzalez, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Wayne Nastri, Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Bruce H. Wolfe, Executive Officer II
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

ATTACHMENT A
Rain Dates, Aaron Metals, Oakland, California

			February	19	2003	December	02	2003
March	17	2002	February	25	2003	December	04	2003
March	22	2002	February	26	2003	December	05	2003
March	23	2002	March	13	2003	December	06	2003
April	09	2002	March	14	2003	December	07	2003
April	16	2002	March	15	2003	December	09	2003
April	29	2002	March	16	2003	December	10	2003
May	19	2002	March	17	2003	December	12	2003
May	20	2002	March	18	2003	December	13	2003
May	21	2002	March	19	2003	December	14	2003
June	21	2002	March	20	2003	December	19	2003
June	22	2002	March	23	2003	December	20	2003
August	02	2002	March	26	2003	December	21	2003
November	07	2002	April	01	2003	December	23	2003
November	08	2002	April	02	2003	December	24	2003
November	10	2002	April	03	2003	December	25	2003
December	06	2002	April	04	2003	December	28	2003
December	09	2002	April	12	2003	December	29	2003
December	10	2002	April	13	2003	January	01	2004
December	13	2002	April	14	2003	January	02	2004
December	14	2002	April	16	2003	January	06	2004
December	15	2002	April	21	2003	January	08	2004
December	16	2002	April	22	2003	January	09	2004
December	17	2002	April	24	2003	January	14	2004
December	18	2002	April	25	2003	January	23	2004
December	19	2002	April	27	2003	January	24	2004
December	20	2002	April	28	2003	January	26	2004
December	21	2002	April	29	2003	January	27	2004
December	25	2002	May	02	2003	January	30	2004
December	26	2002	May	03	2003	February	01	2004
December	27	2002	May	06	2003	February	02	2004
December	28	2002	May	07	2003	February	03	2004
December	29	2002	May	08	2003	February	06	2004
December	30	2002	May	30	2003	February	13	2004
December	31	2002	July	24	2003	February	15	2004
January	09	2003	September	03	2003	February	16	2004
January	10	2003	November	02	2003	February	17	2004
January	12	2003	November	03	2003	February	18	2004
January	20	2003	November	06	2003	February	20	2004
January	21	2003	November	07	2003	February	21	2004
January	22	2003	November	08	2003	February	22	2004
January	23	2003	November	09	2003	February	24	2004
February	11	2003	November	14	2003	February	25	2004
February	12	2003	November	15	2003	February	26	2004
February	13	2003	November	17	2003	February	27	2004
February	15	2003	November	30	2003	March	01	2004
February	16	2003	December	01	2003	March	25	2004

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Rain Dates, Aaron Metals, Oakland, California

March	27	2004	January	18	2005	May	04	2005
April	18	2004	January	19	2005	May	05	2005
April	19	2004	January	20	2005	May	08	2005
April	20	2004	January	21	2005	May	09	2005
April	21	2004	January	22	2005	May	18	2005
May	28	2004	January	23	2005	May	19	2005
August	23	2004	January	24	2005	June	8	2005
August	24	2004	January	25	2005	June	09	2005
September	19	2004	January	26	2005	June	16	2005
October	17	2004	January	27	2005	June	17	2005
October	19	2004	January	28	2005	June	18	2005
October	20	2004	February	07	2005	October	14	2005
October	23	2004	February	11	2005	October	15	2005
October	25	2004	February	14	2005	October	26	2005
October	26	2004	February	15	2005	October	29	2005
November	03	2004	February	16	2005	November	03	2005
November	04	2004	February	17	2005	November	04	2005
November	09	2004	February	18	2005	November	07	2005
November	10	2004	February	19	2005	November	08	2005
November	11	2004	February	20	2005	November	09	2005
November	13	2004	February	21	2005	November	25	2005
November	27	2004	February	26	2005	November	28	2005
December	06	2004	February	27	2005	November	29	2005
December	07	2004	February	28	2005	December	01	2005
December	08	2004	March	01	2005	December	02	2005
December	10	2004	March	02	2005	December	07	2005
December	26	2004	March	03	2005	December	17	2005
December	27	2004	March	04	2005	December	18	2005
December	28	2004	March	09	2005	December	19	2005
December	29	2004	March	18	2005	December	20	2005
December	30	2004	March	19	2005	December	21	2005
December	31	2004	March	20	2005	December	22	2005
January	01	2005	March	21	2005	December	25	2005
January	02	2005	March	22	2005	December	26	2005
January	03	2005	March	23	2005	December	27	2005
January	04	2005	March	27	2005	December	28	2005
January	05	2005	March	28	2005	December	29	2005
January	06	2005	March	29	2005	December	30	2005
January	07	2005	April	03	2005	December	31	2005
January	08	2005	April	04	2005	January	06	2006
January	09	2005	April	07	2005	January	08	2006
January	10	2005	April	08	2005	January	13	2006
January	11	2005	April	22	2005	January	21	2006
January	12	2005	April	23	2005	January	03	2006
January	13	2005	April	27	2005	January	18	2006
January	16	2005	April	28	2005	January	11	2006
January	17	2005	April	29	2005	January	27	2006

ATTACHMENT A**Rain Dates, Aaron Metals, Oakland, California**

January	07	2006	April	04	2006	February	10	2007
January	01	2006	April	12	2006	February	11	2007
January	17	2006	April	02	2006	February	12	2007
January	30	2006	April	11	2006	February	21	2007
January	28	2006	April	16	2006	February	22	2007
January	02	2006	May	24	2006	February	23	2007
January	14	2006	May	19	2006	February	24	2007
February	17	2006	May	21	2006	February	25	2007
February	04	2006	June	28	2006	February	26	2007
February	02	2006	July	20	2006	February	27	2007
February	26	2006	July	06	2006	February	28	2007
February	01	2006	July	21	2006			
February	27	2006	August	02	2006			
February	28	2006	October	05	2006			
March	29	2006	October	06	2006			
March	17	2006	October	17	2006			
March	21	2006	November	02	2006			
March	11	2006	November	03	2006			
March	13	2006	November	04	2006			
March	30	2006	November	09	2006			
March	04	2006	November	11	2006			
March	10	2006	November	12	2006			
March	28	2006	November	13	2006			
March	07	2006	November	14	2006			
March	01	2006	November	15	2006			
March	02	2006	November	23	2006			
March	09	2006	November	27	2006			
March	27	2006	November	28	2006			
March	12	2006	December	09	2006			
March	03	2006	December	10	2006			
March	16	2006	December	11	2006			
March	31	2006	December	12	2006			
March	06	2006	December	13	2006			
March	24	2006	December	14	2006			
March	14	2006	December	15	2006			
March	20	2006	December	16	2006			
March	25	2006	December	22	2006			
March	05	2006	December	27	2006			
April	01	2006	January	04	2007			
April	17	2006	January	05	2007			
April	15	2006	January	17	2007			
April	08	2006	January	26	2007			
April	10	2006	January	27	2007			
April	09	2006	January	28	2007			
April	05	2006	February	07	2007			
April	03	2006	February	08	2007			
April	07	2006	February	09	2007			